1946 **File No.** O. Cotton Cloth Trade Regn. 1946

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Subject:—

Opinions under the Bombay Cotton Cloth Trade Regulation Order 1945

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Messrs. Shah and Mehta have served Government with notice under section 80 Civil Procedure Code contending that (1) clause 8 of the Bombay Cotton Cloth Trade Regulation Order, 1945 is ultra vires and that (2) the Government of Bombay has not right to refuse them license on the ground that they did not carry on business before 31st December 1942.

The Bombay Cotton Cloth Trade Regulation Order, 1945 is made under clause (a) of rule 81 of Defence of India Rules read with clause (XX) of section 2(2) of the Defence of India, Act. Clause 8 of that order provides that notwithstanding anything contained in this order the Government of Bombay may without assigning any reason direct that they application for a license be refused. "A power to control trade under rule 81(2) read with clause (XX) of section 2(2) of the Defence of India Act includes a power to prohibit as the Court of appeal in England pointed out in the Queen versus Croydon and Norwood Tramways Company (1886, 18 Q.B.D. 39). In that case Lindley L.J. observed.

"If I prohibit a man from doing anything, I control him to that extent."

Following that decisions Leach C.J. in public Prosecutor versus Alpak Venkayya(I.L.R.1944 Mad.448) observed at p. 454 :

"One way of controlling or regulating a trade is by insisting upon those engaged in it takingo out licenses. The power to grant a license must contain a power to refuse one if this is de med to be expedient. In our judgement the Central Government had the power under rule 81(2) to issue food-grains control order and the provisions of clause 3 are in all respects intra vires notwithstanding that there is a discretion in the matter of issuing licences."

It is therefore apparent that clause 8 of the Bombay Cotton Cloth Trade Regulation Order is intra vires.

The next question for consideration is whether in

the exercise of power vested under clause 8 of the Cotton Cloth Trade Regulation Order Government can refuse a licence to those who were not in the business before 1942, Messrs. Shah and Mehta in this connection rely on section 15 of the Defence of India Act which provide :

> "Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and enjoyment of property as little as may be consonant with the purpose of ensuring the public safety, interest and the defence of British India."

It is true that ordinarilly a person is entitled to pursue his normal avocation and engage in the cotton cloth business provided he conforms to the regulation of that business and obtains a licence from the Licensing Authority under the Bombay Cotton Cloth Regulation Order. But under this Order it is open to Government to direct without assigning any reason that any application for a licence may be refused; and if on grounds of public policy and for the public good Government decides ~~kk~~ not to grant any licenses to persons who were not in the business before 1942 such action could hardly be deemed to involve a breach of section 15 of the Defence of India Act. The suit if filed can be successfully defamed. No action appears necessary at this stage.

P.N.M/6/6/46.
Remembrancer of Legal Affairs.

u.r. to C.S.D. No.4206, dated the 7th June 1946.

VGP. 24-8-56.